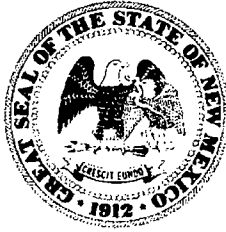


STATE OF NEW MEXICO
AGREEMENT BETWEEN OWNER AND CONTRACTOR



Distribution to:

____ Owner
____ Contractor
____ Arch/Eng.
____ DFA
____ GSD/ASD
____ Purchasing Division

Contract Number: 70-350-16-06973

ITB # 70-350-16-06973

This Agreement entered into this 22nd day of December, 2016, by and between the parties as follows:

THE OWNER:

Pamela Nicosin, Acting Director
Facilities Management Division
General Services Department
PO Box 6850
2542 Cerrillos Road
Santa Fe, New Mexico 87502
TELEPHONE: (505) 827-2141
FAX: (505) 827-2181

THE CONTRACTOR:

R&M Construction LLC
P.O. Box 1026
Alcalde, NM 87511
Telephone: (505) 819-0309

FOR THE FOLLOWING PROJECT: **New Mexico State Police District 7 Headquarters,
Española, NM**

Building Number: **17-165-000004**
ARCHITECT/ENGINEER OF RECORD: **The Hartman & Majewski Design Group**
Telephone: **(505) 242-6880**
Fax: **(505) 242-6881**

RECITALS

WHEREAS, the New Mexico State Legislature, pursuant to Laws of **2016**, Section 7, Lines **11-14** funded the above-referenced Project; and

WHEREAS, the New Mexico State Legislature, pursuant to Laws of **2016**, Chapter **83**, Section **74**, funded the above-referenced Project; and

WHEREAS, the New Mexico State Legislature, pursuant to Laws of **2015**, Chapter **3**, Section **82**, Line **9**, funded the above-referenced Project; and

WHEREAS, the New Mexico State Legislature, pursuant to Laws of **2015**, Chapter **3**, Section **79**, Line **23**, funded the above-referenced Project; and

WHEREAS, the New Mexico State Legislature, pursuant to Laws of **2013**, Chapter **226**, Section **9**, Item **10**, funded the above-referenced Project; and

WHEREAS, the Owner, through its Director, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 (Repl.Pamp.2002), 15-3B-4(10), and 15-3B-6, NMSA 1978; and

WHEREAS, the Owner has let this contract according to the established State Purchasing procedures for Contracts of the type and amount.

The OWNER and the CONTRACTOR agree as set forth below:

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

This Agreement	Notice to Proceed
Performance Bond	Drawings
Labor and Material Payment Bond	Specifications
Certificate of Insurance	Agent's Affidavit
Notice of Award	Assignment of Antitrust Claims
Contractor's Proposal Dated: October 7, 2016	Conditions of the Contract (General,
ITB & All Addenda Issued Prior to, and all Modifications	Supplementary, and Other Conditions)
Issued after Execution of this Agreement	

These documents form the Contract, and all are as fully a part of the Contract, as if attached to this Agreement, or repeated herein. An enumeration of the Contract Documents appears in Article 7.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

- **The Construction of a new building of approximately 10,000 square feet including associated mechanical, electrical and site work as indicated in the specifications and drawings prepared by The Hartman + Mejewski Design Group, dated May 9, 2016.**

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall commence no later than ten (10) consecutive calendar days after the date of written "Notice to Proceed". Substantial Completion shall be achieved not later than **240** calendar days after the date of written "Notice to Proceed", except as hereafter extended by the Owner by valid written Change Order.

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the Contractor agrees, in partial consideration for the award of this Contract, to pay to the Owner the amount of **Two Hundred Fifty Dollars (\$250.00)** per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

ARTICLE 4

CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of **Three Million Five Hundred Seventy-Four Thousand Nine Hundred Sixty-Three Dollars and Thirteen Hundredths (\$3,574,963.13)**, including New Mexico Gross Receipts Tax.

The Contract sum is determined as follows:

Lump Sum	\$
	3,240,000.00
Add Alt #1	<u>\$ 53,000.00</u>
Sub-total	\$ 3,293,000.00
<u>Gross Receipts Tax @ 8.5625%</u>	<u>\$ 281,963.13</u>
Contract Sum	\$ 3,574,963.13
Total amount to be encumbered for	
Contract No. 70-350-16-06973	\$3,574,963.13

If the state gross receipts tax or local option tax increases the Contractor must submit a request for a change order in order to increase the state gross receipts tax or local option tax on this Contract (1.4.1.24 NMAC).

Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross tax or local option tax but that the bid amount exclude the applicable state gross receipts tax or local option tax but that the contracting agency shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into. The tax shall be shown as a separate amount on each billing or requires for payment made under the contract.

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the Contract Sum, to the Contractor as provided in the Contract Documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following receipt by the Owner of the undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work, and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Sum, less such amounts as the Architect/Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents, which shall be paid in accordance with Article 6 of this Contract.

Valid, undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due, at the legal rate established by the Prompt Payment Act Laws of 2001, Chapter 57, Section 5 NMSA 1978.

Prompt Payment Act. Payments prompt pay required: withholding prohibited except as provided in Subsection B of this section, all construction contracts shall provide that payment for amounts due shall be paid within twenty-one days after the owner receives and undisputed request for payment. Payment by the owner to the contractor may be made by first-class mailing, electronic fund transfer or by hand delivery of the undisputed amount of a pay request based on work completed or services provided under the contract. If the owner fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the owner shall pay interest to the contractor beginning on the twenty second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

ARTICLE 6

FINAL PAYMENT

Final payment constituting the entire undisputed and unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within ten (10) days after notification the Owner, by the Architect/Engineer, that all

incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the Contractor shall provide to the Owner a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

ARTICLE 7

GENERAL AND SPECIAL PROVISIONS

- 7.1 This Agreement shall be governed exclusively by the provisions hereof, and by the laws of the State of New Mexico, as the same from time to time exist.
- 7.2 Terms used in this Agreement, which are defined in the Conditions of the Contract, shall have the meanings designated in those Conditions.
- 7.3 Any contract awarded as a result of this ITB process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the Offeror. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Offeror as final.
- 7.4 As between the parties to this Agreement: As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.
- 7.5 The Contractor shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the Contractor.
- 7.6 This Agreement shall neither become effective nor binding until:
 - A. Approved by the State Purchasing Agent; and
 - B. Signed by all parties which are required to sign this Agreement.
- 7.7 The Contractor and his agents and employees are independent contractors, and are not employees of the State of New Mexico. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico, as a result of this Agreement.
- 7.8 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the State of New Mexico from all liabilities and obligations arising from or under this Agreement, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the Contractor may incur.

7.9 The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7.10 **Notices.** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as follows:

THE OWNER:

Pamela Nicosin, Acting Director
Facilities Management Division
PO Box 6850
2542 Cerrillos Road
Santa Fe, NM 87502
Telephone: (505) 827-2141
Fax: (505) 827-2181

THE CONTRACTOR:

R&M Construction LLC
P.O. Box 1026
Alcalde, NM 87511
Telephone: (505) 819-0309

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as here in above provided.

7.11 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

7.12 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

7.13 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

7.14 **Certificates and Documents Incorporated.** All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

7.15 **Separability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

7.16 **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

- 7.17 **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 7.18 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 7.19 **Words and Phrases.** Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 7.20 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.
- 7.21 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-24-1 through 30-24-3, NMSA 1978, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, violations of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.
- 7.22 The Contract Documents, which constitute the entire Agreement between the Owner and the Contractor, are listed in Article 1, and except for Modifications issued after execution of this Agreement, are enumerated as follows:
- 7.22.1 The documents bound in the ITB, including Appendixes, dated **May 9, 2016**:

DOCUMENTS

PAGES

Bid Form	00300	1 - 6
Agreement between Owner and Contractor	00500	1 - 11
Performance Bond	00600	1 - 2
Labor and Material Payment Bond	00600	3 - 4
Agent's Affidavit	00600	5
Certificate of Insurance	00600	6
Assignment of Antitrust Claims	00600	7
Notice of Award	00600	8 - 9
Notice to Proceed	00600	10
General Conditions	00700	1 - 19
Supplementary Conditions	00800	1 - 27
Addenda and Modifications	00900	1

SPECIFICATIONS

Division 1 - General Requirements
01 10 00 Summary

01 10 00 1 - 4

01 25 00	Substitution Procedure	01 25 00	1 – 3
01 25 01	Substitution Request	01 25 01	1 – 2
01 26 00	Contract Modification Procedures	01 26 00	1 – 3
01 29 00	Payment Procedures	01 29 00	1 – 5
01 31 00	Project Management and Coordination	01 31 00	1 – 10
01 32 00	Construction Progress Documentation	01 32 00	1 – 7
01 33 00	Submittal Procedures	01 33 00	1 – 10
01 40 00	Quality Requirements	01 40 00	1 – 10
01 42 00	References	01 42 00	1 – 8
01 50 00	Temporary Facilities and Controls	01 50 00	1 – 8
01 60 00	Product Requirements	01 60 00	1 – 6
01 73 00	Execution	01 73 00	1 – 10
01 77 00	Closeout Procedures	01 77 00	1 – 6
01 78 23	Operations and Maintenance Data	01 78 23	1 – 9
01 78 39	Project Record Documents	01 78 39	1 – 4
01 79 00	Demonstration and Training	01 79 00	1 – 5
01 91 13	General Commissioning Requirements	01 91 13	1 - 19

Divisions 2-33

7.22.2 The following Drawings, dated **May 9, 2016**

GENERAL

- G-001 Cover Sheet and Drawings Index
- G-002 Project Information
- G-101 Life Safety Plan

CIVIL

- CG001 Civil General Notes and Legend
- C-001 Site Demolition Plan
- C-101 Site Paving Plan
- C-102 Horizontal Control Plan
- C-201 Site Grading Plan
- C-301 Site Utility Plan
- C-501 Civil Details
- C-502 Utility Details
- C-503 Utility Details
- CD-1 Existing Conditions Drainage Plan
- CD-2 Site Grading and Drainage Plan

LANDSCAPE

- LI101 Irrigation Plan
- LP101 Planting Plan
- LS501 Landscape and Irrigation Details

STRUCTURAL

- S-001 General Structural Notes
- S-002 General Structural Details
- S-101 Foundation Plan
- S-111 Framing Plan
- S-112 Roof Deck Key Plan
- S-301 Foundation Sections

S-311	Framing Sections
S-312	Framing Sections
	ARCHITECTURAL
A-101	Floor Plan
A-102	Roof Plan
A-103	Reflected Ceiling Plan
A-201	Building Elevations
A-301	Building Sections
A-302	Wall Sections
A-401	Enlarged Plans and Interior Elevations
A-501	Details
A-502	Details
A-601	Door Schedule and Opening Elevations Types
A-602	Opening Elevations
	INTERIORS
I-101	Finish Floor Plan & Finish Legend
I-102	Furniture Plan
	FIRE PROTECTION
FX001	Fire Protection Legend
FX101	Level 1 – Main Building Fire Protection Plan
	PLUMBING
P001	Plumbing Legend
PL101	Level 1 – Main Building Waste & Vent Plan
PL102	Level 2 – Plumbing Roof Plan
PP101	Level 1 – Main Building Pressure Piping Plan
P501	Plumbing Details
P601	Plumbing Waste and Vent Diagram
P602	Plumbing Domestic Water Diagram
P701	Plumbing Specifications
P702	Plumbing Schedules
	MECHANICAL
M001	Mechanical Legend
MH101	Level 1 – Main Building HVAC Plan
MH102	Level 2 – Mechanical Roof Plan
MP101	Level 1 – Main Building Mechanical Piping Plan
M301	Mechanical Sections
M302	Mechanical Sections
M401	Enlarged Mechanical Plans
M501	Mechanical Details
M502	Mechanical Details
M503	Mechanical Details
M601	Mechanical Diagrams
M602	Mechanical Boiler Piping Diagram
MI001	Mechanical Instrumentation Legend
MI601	Mechanical Controls
MI602	Mechanical Controls
MI603	Mechanical Controls

MI604	Mechanical Controls
MI605	Mechanical Controls
MI606	Mechanical Controls
MI607	Mechanical Controls
M701	Mechanical Schedules
M702	Mechanical Schedules
ELECTRICAL	
E001	Electrical Legend
ES101	Electrical Site Plan
EL101	Electrical Lighting Plan
EP101	Electrical Power Plan
EP102	Electrical Roof Plan
FA101	Fire Alarm Plan
ESP101	Electrical Special Systems
E401	Enlarged Electrical Plan
E501	Electrical Detail Sheet
E601	Electrical One-Line Diagram
E602	Electrical Grounding Diagram
E701	Electrical Schedules
SECURITY SYSTEMS	
T-101	Access Control Plan – For Information Only
T-102	Video Surveillance Plan – For Information Only

7.22.3 Amendments:

No.	<u>1</u>	Description:	<u>General Clarifications, Changes to the Project Manual and Drawings</u>	Date:	<u>9/22/16</u>
No.	<u>2</u>	Description:	<u>Bid Date Change, Changes to the Project Manual and Drawings</u>	Date:	<u>9/26/16</u>

7.23 The Contractor or a potential contractor, agrees to comply with state laws and rules pertaining to worker's Compensation insurance coverage for its employees. If contractor fails to comply with the Worker's Compensation Act, and applicable rules when required to do so, the contract may be canceled effective immediately.

7.24 **New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed two hundred fifty thousand (\$250,000) dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://www.insurenwemexico.state.nm.us/default.aspx>

7.25 Employee Pay Equity Reporting

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

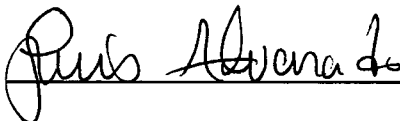
END OF ARTICLE 7

Contract No.: 70-350-16-06973

REVIEWED:

AS TO CONTRACTOR'S REGISTRATION

TAXATION AND REVENUE DEPARTMENT: The records of the Department reflect that the Contractor is registered to pay gross receipts and compensating taxes under the following New Mexico State Tax ID Number: **03345374-00-8**

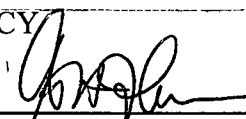
By: 

Title: _____ Date: 12-22-16

Taxation and Revenue is only verifying the registration and will not confirm or deny any taxability statements contained in this contract.

AS TO LEGAL FORM AND SUFFICIENCY

General Counsel,
GSD

By: 

Title: General Counsel Date: 12-22-16

APPROVED:


CONTRACTOR:
Name

By:  Robert Sanchez

Title: VP Date: 12/21/16

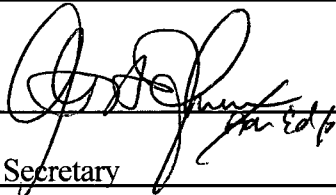
Federal Tax Identification Number: **90-174523**

OWNER:
Facilities Management
Division, GSD

By: 

Title: Director, Facilities Management Division Date: 12/22/16

Office of the Secretary,
GSD

By: 

Title: GSD Secretary Date: 12/22/16

State Purchasing Agent,
GSD

By: 

Title: State Purchasing Agent Date: 12-22-16